DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. M & T MORTGAGE CORPORATION Respondent	Case No.: I-00-20272

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (No. 00-20272) served March 13, 2002, the Government charged Respondent M&T Mortgage Corporation with a violation of 21 DCMR 700.3 for allegedly failing to properly containerize solid wastes,[1] and 21 DMR 707.3 for allegedly failing to provide sufficient storage between collections.[2] The Notice of Infraction charged that the violations occurred on February 27, 2002 at 1855 Kendall Street, N.E., and sought a fine of $1,000 for each violation, for a total fine sought of $2,000.

[1] 21 DCMR 700.3 provides: "All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard."

[2] 21 DCMR 707.3 provides: "If containers are used for the storage of rubbish, or a combination [of] rubbish and food waste (garbage), a sufficient number shall be provided to store such solid wastes which may accumulate on the premises during the usual interval between collections."

Respondent failed to answer the Notice of Infraction within the allotted twenty days (fifteen days plus five days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on April 27, 2002, this administrative court issued an order finding Respondent in default and subject to a statutory penalty equal to the amount of the authorized fines pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f).

On May 15, 2002, Respondent filed an untimely answer of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a suspension or reduction in any fine or statutory penalty. As to the violation of § 700.3, Respondent explained that it obtained possession of the subject property through a foreclosure sale on August 16, 2001, and since that time, has been attempting to evict existing tenants so that the property could be conveyed back to the United States Department of Housing and Urban Development ("HUD").[3] Respondents further explained that upon receiving the Notice of Infraction on March 20, 2002, it obtained bids from local contractors to remove debris from the property, and submitted those bids to HUD for approval. Respondent represented that the work was completed on April 23, 2002. Respondent noted that it had not been aware of the conditions at the property "since it is not our practice to complete work on a property until it is vacant unless we are notified otherwise." As to the violation of § 707.3, Respondent explained that an eviction of the property's remaining tenants was scheduled for May 7, 2002. As such, the numbers of waste containers on the property "will not be a problem."

[3] There is nothing in the record explaining HUD's relationship, if any, to Respondent or to the subject property.

By order dated May 29, 2002, I permitted the Government an opportunity to respond to Respondent's answer and request for a reduction or suspension of any fine or statutory penalty. The Government opposed Respondent's request, asserting that Respondent should be held "accountable" for the admitted violations.[4] Based upon the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 7003 on February 27, 2002 at 1855 Kendall Street, N.E.

2. On February 27, 2002, Respondent failed to store and containerize for collection solid wastes "in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard" at 1855 Kendall Street, N.E. 21 DCMR 700.3.

[4] As noted in previous orders of this administrative court, the Government's conclusory assertion, in response to a particularized request for a reduction or suspension of fines and/or statutory penalties, that a respondent "should be held accountable" is of insufficient evidentiary or legal value, and, as such, can be given no weight in this administrative court's determination of the appropriateness of the requested relief. *Accord DOH v. 3237 Limited Partnership*, OAH No. I-00-70320 at 4 n.3 (Final Order, June 3, 2002). In order to respond in a manner that might have some bearing on the disposition of future cases like these, the Government should consider: (1) addressing with particularity the facts of an explanation provided by a respondent in support of the requested relief; (2) stating clearly why those facts, if credited, should or should not be considered by this administrative court in determining whether to grant the requested relief; and (3) identifying any other mitigating or aggravating factors specific to the respondent that the Government believes this administrative court should consider in determining whether to grant the requested relief. *See generally Celotex Corp. v. Cartrett*, 477 U.S. 317, 328 (1986) (noting mere conclusory statements are not a sufficient basis upon which to grant dispositive relief) (White, J., concurring); *Barkus v. Kaiser*, No. 00-7044, 2000 U.S. App. LEXIS 23638, at *5-6 (10th Cir., Sept. 19, 2000) (noting conclusory and unsworn allegations insufficient to rebut particularized assertions of fact).

3. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 707.3 on February 27, 2002 at 1855 Kendall Street, N.E.

4. On February 27, 2002, Respondent failed to provide a sufficient number of waste containers "to store such solid wastes which may accumulate on the premises during the usual interval between collections" at 1855 Kendall Street, N.E. 21 DCMR 707.3.

5. Respondent obtained possession of the property at 1855 Kendall Street, N.E. through a foreclosure sale on August 16, 2001, and since that time, has been attempting to evict existing tenants so that the property could be conveyed to HUD. An eviction of the remaining tenants was scheduled for May 7, 2002.

6. Upon receiving the Notice of Infraction on March 20, 2002, Respondent obtained bids from local contractors to remove debris from the property, and submitted those bids to HUD for approval. The work was completed on April 23, 2002. Respondent noted that it had not been aware of the conditions at the property giving rise to the Notice of Infraction "since it is not our practice to complete work on a property until it is vacant unless we are notified otherwise."

7. Respondent has accepted responsibility for its unlawful conduct.

8. There is no evidence in the record of a history of non-compliance by Respondent.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 and 21 DCMR 707.3 on February 27, 2002. The Rodent Control Act of 2000 authorizes a fine of $1,000 for a first violation of each of these regulations.[5] 16 DCMR §§ 3201.1(a)(1), 3216.1(a) and 3216.1(c).

2. Respondent has requested a reduction or suspension of the authorized fine and statutory penalty. As to the fine authorized for the violation of § 700.3, Respondent's stated policy of not addressing the waste conditions at its property until that property is vacant does not mitigate Respondent's liability for those conditions. *See Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (imposing strict liability on property owners for violation of § 700.3); *see also DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 4 (Final Order, March 12, 2002) (noting that, for purposes of § 700.3, a respondent must bear the risks associated with his or her business decisions). In light of Respondent's acceptance of responsibility, demonstrated efforts to comply with the requirements of § 700.3 and the lack of a history of non-compliance, however, I will reduce the fine to $500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

3. As to the fine authorized for the violation of § 707.3, Respondent's suggestion that the eviction of the property's tenants makes the violation moot may be

[5] The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including §§ 700.3 and 707.3. 47 D.C. Reg. at 6339 (August 11, 2000).

logically sound going forward, but it does not mitigate liability as of the date of the violation. In light of Respondents' acceptance of responsibility and the lack of a history of non-compliance, however, I will reduce the fine to $675. *See* D.C. Official Code § 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

4. Respondent has also requested a reduction or suspension of the authorized statutory penalty. The Civil Infractions Act requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. D.C. Official Code §§ 2-1802.02(f) and 2-1802.05. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the authorized fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

5. In this case, Respondent has not submitted any evidence explaining its failure to timely respond to the first Notice of Infraction. While I credit Respondent's representation that, upon receiving the Notice of Infraction, it promptly sought bids to correct the waste storage problems at its property, that activity does not explain Respondent's failure to timely answer the Notice of Infraction as clearly instructed on the Notice of Infraction form and as set forth in D.C. Official Code § 2-1802.02. Accordingly, Respondent has failed to establish good cause for its untimely answer, and the statutory penalty of $2,000 shall be imposed without adjustment.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ___ day of _____, 2002:

ORDERED, that Respondent shall pay fines and statutory penalties in the total amount of **THREE THOUSAND ONE HUNDRED AND SEVENTY-FIVE DOLLARS ($3,175)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 07/10/02

_____
Mark D. Poindexter
Administrative Judge